IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ravi Kumar Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.913/2003)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 27-5-2003 in Sessions Case No.(1/2002) 17/2003 passed by Shri Arun Kumar Pareek, RHJS, Additional Sessions Judge (Fast Track) No.2, Jhunjhunu.

Date of Judgment: August 20, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mrs. Alka Bhatnagar, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

This appeal stem from the judgment dated May 27, 2003 of the learned Additional Sessions Judge (Fast Track) No.2 Jhunjhunu whereby the appellant Ravi Kumar was convicted and sentenced under section 302 IPC to suffer imprisonment for life and fine of Rs.100/-, in default to further suffer simple imprisonment for one month.

2. A report was lodged on October 31, 2001 by Rudmal Sarpanch of Village Thathwadi against the appellant to the effect that the appellant committed murder of his wife. A case under section 302 IPC was registered and investigation commenced. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Jhunjhunu. Charges under

section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 12 witnesses. In the explanation under Sec.313 CrPC, the appellant admitted the allegation made against him. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated above.

3. Having considered the rival submissions and on careful scrutiny of the material on record we notice that the appellant at the trial was of unsound mind and incapable to defend himself. It appears that application under section 329 CrPC was filed on behalf of the appellant and pursuant to the direction of learned trial Judge the appellant was medically examined and sent to Mental Hospital Jaipur where it was noticed that the appellant was a patient of Psychosis NOS. Dr. Paramjeet Singh Psychiatrist SMS Hospital Jaipur deposed before the learned Trial Judge that the appellant was suffering from mental disease and further three months were required to completely eradicate the disease. Thereafter learned counsel for the appellant on April 19, 2003 moved two applications under sections 329 and 330 CrPC. Learned trial Judge however vide order dated April 26, 2003 dismissed both the applications with the observation that the appellant was behaving like a normal person.

4. We have heard rival submissions and scanned the material on record. At this juncture we deem it appropriate to consider the relevant statutory provisions.

5. Section 329 CrPC lays down the procedure in case of unsound mind of the accused. It provides that if at the trial it appears that the accused is incapable of making his defence, the court in the first instance, shall try

the fact of such unsoundness and incapacity, and the Court, after considering such medical and other evidence, comes to the conclusion that the accused is of unsound mind the court shall record a finding to that effect and shall postpone further proceedings in the case. The trial of the fact of unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

6. In Sarfu Khan Vs. State of Jharkhand (2004)13 SCC 460, the Apex Court observed that in case, the appellant is lunatic, the procedure as laid down in Chapter 25 CrPC has to be followed. It would be for the appellant to make an appropriate motion before the trial court. On such a motion being made, the matter would be decided, keeping in view the provisions of the said chapter of CrPC and, of course, if the trial court comes to the conclusion that the appellant is insane, the order in terms of Section 330 CrPC would be passed.

7. Evidently mandate of section 329 CrPC is that where the court comes to the conclusion that the accused is of unsound mind and incapable of making his defence the trial should be postponed. Subsequently, the trial should be commenced only after recording medical evidence about fitness of the accused. Flouting of the mandate of section 329 CrPC would vitiate the trial. But in the instant case, as already noticed, learned trial Judge completely overlooked the mandate of Section 329 CrPC. Despite the fact that the appellant was of unsound mind and he had been admitted in Mental Hospital Jaipur, the trial court did not wait till the appellant was completely treated for his mental disease. It was incumbent on learned trial court to call for the report of Mental Hospital Jaipur about the fitness of the appellant.

Learned trial court without the evidence of Psychiatrist could not have observed that the appellant was fit and normal from his mental disease. We find no material on record which could establish that the appellant was completely treated before the trial commenced. Learned trial Judge was required to follow the mandate of Section 329 CrPC. It thus vitiate the trial and the impugned judgment of learned trial Judge is liable to be set aside.

8. For the reasons aforementioned, the appeal stands allowed and the impugned judgment dated May 27, 2003 of learned Additional Sessions Judge (Fast Track) No.2, Jhunjhunu is set aside and the case is remanded back to learned Additional Sessions Judge (Fast Track) No.2 Jhunjhunu for de-novo trial in accordance with Section 329 and other relevant provisions of CrPC.

Record of the case be sent back forthwith.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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